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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/062,680	02/01/2002	Paul R. Jarko	1992-A	2184

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EXAMINER

VANAMAN, FRANK BENNETT

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 08/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/062,680

Applicant(s)

JARKO ET AL.

Examiner

Frank Vanaman

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 16-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3, 8, 10, 12 and 17-20 is/are allowed.
- 6) ☒ Claim(s) 4-7, 13, 16, 21-29 and 33 is/are rejected.
- 7) ☒ Claim(s) 9, 11 and 30-32 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **Status of Application**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 31, 2005 has been entered.
2. Claims 1-13, and 16-33 are pending, claim 33 having been newly added.

### **Specification**

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claim 22, as amended, recites that the upper support shelf is arranged such that "the top opening of the container is accurately positioned so that said lid selectively matingly engages and closes the top opening of the container..." however the specification fails to explicitly refer to this accurate positioning.

### **Claim Rejections - 35 USC § 103**

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 7, 22, 24, 25, 28 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salmon et al. in view of Rauschenberger et al. (EP 0 955 224). Salmon et al. teach a cart which accommodates at least two recycling containers (70) which have a generally parallelepiped format with downwardly tapering side walls (e.g., fig. 1 – and inherently understood to have a bottom wall so that they can function as containers), the cart having an upright frame (16, 40, 50, etc.) including side walls (38, 50) which extend upwardly and partially enclose the containers, the front sides being un-enclosed, and including a plurality of vertically arranged and aligned support shelves (42) each of which is taught to be able to accommodate one container (see col. 4, lines 13-15), in a stacked configuration, such that the containers may be slid in and out of the cart (fig. 3), a lid (48) mounted to the top of the cart for movement between an open and closed position, the closed position covering the top of a container (70) when placed on

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the top most shelf (42) and having a shape which compliments the shape of the container top portions, a pair of wheels (32), and a further receptacle location opposite the shelves (e.g., between 50 and 36) for accommodating newspapers, which extends downwardly from the top of the cart to its base. The reference to Salmon et al. fails to teach the shelves having a front rim and being formed with a plurality of holes.

Rauschenberger et al. teach a cart construction wherein shelves (e.g., 2, 3) are provided with a front rim (see, e.g., figure 1; proximate numeral 16. which appears to identify the entire rim) and a plurality of holes (e.g., 17). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the shelves of the cart of Salmon et al. with holes as taught by Rauschenberger et al., for the purpose of providing shelves having a lighter weight. As regards the mating engagement of the lid and a container on the uppermost shelf, in that the distance between the underside of the cover (48) and the top surface of the topmost shelf (42) is approximately the same as the height of the illustrated containers, and in that Salmon et al. teach that each of the shelves may accommodate a container, it would have been obvious to one of ordinary skill in the art at the time of the invention to adjust the height of the top of the cart (and thus the closed position of the underside of the lid 48) so as to matingly engage and close a container placed on the uppermost shelf, for the purpose of protecting the contents of the container from the elements, should the cart be stored outside.

6. Claims 13 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salmon et al. in view of Rauschenberger et al. and Roman (US 5,707,030). The reference to Salmon et al. as modified by Rauschenberger et al. is discussed above and fails to teach the cart as having an inverted U-shaped frame formed of metal, and wherein the shelves and containers are formed of a plastic such as polypropylene. As regards the provision of a tubular metal U-shaped frame, the reference to Roman teaches a cart having a pivotable top, wherein the cart includes a U-shaped frame (3) made from tubular metal. It would have been obvious to one of ordinary skill in the art at the time of the invention to construct the frame portion of the cart of Salmon et al. (e.g., 16, 52, 50, etc) from a bent U-shaped tubular metal piece such as taught by Roman, for

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the purpose of providing a rigid frame of lighter weight than the panel styled frame taught by Salmon et al.

As regards the shelves and containers, while Salmon et al. fail to teach the specific material from which they are made, the use of plastics such as polypropylene is old and well known in the manufacturing arts, and as such, it would have been obvious to one of ordinary skill in the art at the time of the invention to make the shelves and containers from a plastic material such as polypropylene for the purpose of reducing manufacturing costs.

7. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Salmon et al. in view of Rauschenberger et al. and Toggweiler (CH 310,381). The reference to Salmon et al. as modified by Rauschenberger et al. is discussed above and fails to teach the side members as including a plurality of holes for allowing adjustment of the shelves. Toggweiler teaches a mounting scheme wherein shelves (e.g., 25) may be adjustably mounted on two side members (17) of a cart, in an adjustable fashion, through the use of a plurality of holes (20). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a plurality of holes as taught by Toggweiler in the side mounting portions of the cart of Salmon et al., as modified by Rauschenberger et al. for the purpose of allowing the height of any of the shelves to be adjusted to the user's desire, facilitating flexibility in the objects or containers which may be accommodated therein.

8. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Salmon et al. in view of Rauschenberger et al., Roman (cited above) and Streit et al. (US 4,319,762). The reference to Salmon et al. as modified by Rauschenberger et al. fails to teach the lid as having a dome-shape. Roman teaches a cart having a pivotable lid (12) which has a domed profile. It would have been obvious to one of ordinary skill in the art at the time of the invention to construct the lid of Salmon et al. as modified by Rauschenberger et al. to have a dome-shaped profile as taught by Roman for the purpose of providing a stronger molded element and to reduce the tendency of water to pool on the lid top if the cart is used outdoors. The reference to Salmon as modified by Rauschenberger et al. and Roman fails to teach a latch which engages a container

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placed below. Streit et al. teach a wheeled cart including a container (4) which may be covered with a pivoting lid (16) which is provided with a latch (25, 26) for engaging the container rim (13). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the cart of Salmon et al. as modified by Rauschenberger et al. and Roman with a latch connected to the lid, for engaging at least one container there-below, as taught by Streit et al., for the purpose of insuring that the lid remains closed, thus limiting casual access.

9. Claims 4-6 and 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Salmon et al. in view of Rauschenberger et al., Shyshka et al. (CA 2,271,906) and Barnes (US 5,230,282). The reference to Salmon et al. as modified by Rauschenberger et al. is discussed above and fails to teach the receptacle as including a U-shaped metal element with a straight first side, a curved bottom, a second side which terminates in a top end which has an outwardly curved configuration, with the second side being biased towards the first side by the curvature of the bottom. Shyshka et al. teach a spring steel paper product holding device for a recycling cart, including a U-shaped metal element (550) with a straight first side (551), a curved bottom (553), a second side (555) which terminates in a top end (558) which has an outwardly curved configuration, with the second side being biased towards the first side by the curvature of the bottom. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the receptacle portion of the cart of Salmon et al. as modified by Rauschenberger et al. with the spring-steel holding device taught by Shyshka et al. for the purpose of positively gripping any items placed therein.

The reference to Salmon et al. as modified by Rauschenberger et al. and Shyshka et al. fails to specifically teach the receptacle element as including a mesh screen and including a slot through which a cord may be positioned. Barnes teaches a receptacle having first (16) and second (23, 25), outwardly projecting sides, a bottom (e.g., 17) which may be U-shaped (col. 3, lines 39-40), the basket further having slots (e.g., between 23, 25) which allows the passage of cord (34- note also figures 4, 5), a cord container (30) which may be provided with a cutter (col. 4, line 43), wherein both the cord container and the basket itself (see col. 4, line 48 and col. 4, lines 2-5) may be

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made from a mesh material. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the holder of Shyshka et al. as applied to the cart of Salmon et al. as modified by Rauschenberger et al. with a mesh structure as taught by Barnes, for the purpose of insuring that the holder can accommodate paper products having a longest dimension which is less than the side-to-side spacing of the elements of the holder of Shyshka et al.

10. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Salmon et al. in view Rauschenberger et al. and Barnes. The reference to Salmon et al. as modified by Rauschenberger et al. is discussed above and fails to teach the provision of a cord holder and cutter mounted on the lid. Barnes teaches a receptacle which can be used with a cord container (30) which may in turn be provided with a cutter (col. 4, line 43), wherein both the cord container and the basket itself (see col. 4, line 48 and col. 4, lines 2-5) may be made from a mesh material. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the cart of Salmon et al. as modified by Rauschenberger et al. with a cord holder and cutter as taught by Barnes in order to facilitate the bundling and tying-up of recycled paper products.

While the references of Salmon et al., Rauschenberger et al. and Barnes fail to specifically teach a particular location for the cord holder, it would have been obvious to one of ordinary skill in the art at the time of the invention to locate the holder in an upper most location with respect to the other containers on the cart, and as such, to thusly locate it on the lid, so as to promote easy access to the cord holder and cutter when bundling items.

11. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Salmon et al. in view of Rauschenberger et al. and Streit et al. The reference to Salmon et al. is discussed above and fails to teach a latch on the lid which is configured to engage a container rim. Streit et al. teach a wheeled cart including a container (4) which may be covered with a pivoting lid (16) which is provided with a latch (25, 26) for engaging the container rim (13). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the cart of Salmon et al. as modified by Rauschenberger et al. with a latch connected to the lid, for engaging at least one container there-below,

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as taught by Streit et al., for the purpose of insuring that the lid remains closed, thus limiting casual access.

#### **Allowable Subject Matter**

12. Claims 1-3, 8, 10, 12, and 17-20 are allowed.

13. Claims 9, 11, and 30-32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### **Response to Comments**

14. Applicant's comments, filed with the amendment, have been carefully considered. As regards the reference to Salmon and applicant's assertion that the configuration of the upper support shelf being complementary to the base of the container applicant may be arguing a limitation different to that actually recited in the claim. It appears as though applicant is referring to the portion of claim 22 at line 11, wherein the front rim "for positioning the base of the container" is recited, however this is not equivalent to a complementary configuration.

Further, applicant should note that it is not proper for an examiner to read unclaimed limitations into the claim during prosecution:

From MPEP 2111:

During patent examination, the pending claims must be given their broadest reasonable interpretation consistent with the specification. In re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969) The court explained that "reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is a quite different thing from 'reading limitations of the specification into a claim,' to thereby narrow the scope of the claim by implicitly adding disclosed limitations which have no express basis in the claim." The court found that applicant was advocating the latter, i.e., the impermissible importation of subject



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matter from the specification into the claim.). See also *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997).

Applicant has referred to the side walls of the cart of Salmon as being positioning elements, however applicant has cited no particular figure or passage in Salmon's specification that support this notion.

Applicant refers to the alleged substantial distance between the topmost shelf and the cover, however it appears as though applicant has not noted Salmon's figure 3, which shows a topmost shelf which is positioned downward from the top at approximately the same vertical distance as the height of one of the containers. In arguing that the top is "completely out of contact" with the container, applicant is neglecting the whole of the reference's teachings, and the examiner expresses some surprise that applicant would argue such a point, particularly when both figures 1 and 3 are reproduced side-by-side on the cover of the Salmon reference.

Inasmuch as Salmon's true topmost shelf (if it is not already apparent from the comments directly above, applicant's attention is directed to figure 3) is positioned downwardly approximately the same distance as the height of one of the containers as it stands, it is not deemed to be beyond the skills of the ordinary practitioner to adjust the height of the top of the cart (and thus the closed position of the underside of the lid 48) so as to matingly engage and close a container placed on the uppermost shelf, for the purpose of protecting the contents of the container from the elements, should the cart be stored outside. The examiner notes that the concept of providing a top which will adequately close a container so as to protect its contents from the elements is notoriously old and well known. If applicant believes otherwise, then applicant should so positively state such a belief on the record.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

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### Conclusion

15. Any inquiry specifically concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 571-272-6701.

Any inquiries of a general nature or relating to the status of this application may be made through either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

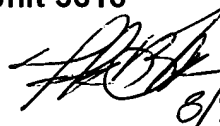
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Or faxed to:

PTO Central Fax: 571-273-8300

**F. VANAMAN**  
**Primary Examiner**  
**Art Unit 3618**



8/9/05